

## STATEMENT OF EMERGENCY

907 KAR 1:014E

(1) This emergency administrative regulation is being promulgated to establish the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care as well as to clarify services requiring prior authorization.

(2) This action must be taken on an emergency basis to ensure the viability of the Medicaid program and to ensure the appropriateness of care provided to Medicaid recipients.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation except that the emergency regulation explicitly states August 1, 2006 as the effective date. The effective date is inappropriate for the ordinary administrative regulation given that it will not be adopted by August 1, 2006.

---

Ernie Fletcher  
Governor

---

Mark D. Birdwhistell, Secretary  
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Hospital and Provider Operations

4 (Emergency Amendment)

5 907 KAR 1:014E. Outpatient hospital services.

6 RELATES TO: KRS 205.520, 42 CFR 447.53

7 STATUTORY AUTHORITY: KRS 194.050[, ~~EO 2004-726~~]

8 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004,~~  
9 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid~~  
10 ~~Services and the Medicaid Program under the Cabinet for Health and Family Services.~~]

11 The Cabinet for Health and Family Services has responsibility to administer the program  
12 of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS  
13 205.520 empowers the cabinet, by administrative regulation, to comply with any  
14 requirement that may be imposed or opportunity presented by federal law for the provision  
15 of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets  
16 forth the provisions relating to outpatient hospital services for which payment shall be  
17 made by the medical assistance program on behalf of [~~in behalf of both~~] the categorically  
18 needy and medically needy.

19 Section 1. Definitions.

20 (1) "Department" means the Department for Medicaid Services or its designee.

21 (2) "Emergency" means that a condition or situation requires an emergency service

1 pursuant to 42 CFR 447.53.

2 (3) "Medical necessity" or "medically necessary" means that a covered benefit is  
3 determined to be needed in accordance with 907 KAR 3:130.

4 (4) "Non-emergency" means that a condition does not require an emergency service  
5 pursuant to 42 CFR 447.53.

6 Section 2. Covered Criteria.

7 (1) To be covered by the department:

8 (a) The following services shall be prior authorized and meet the requirements  
9 established in paragraph (b)1. and 2. of this subsection:

10 1. Outpatient surgery (performed in an outpatient hospital setting);

11 2. Cardiac catheterization;

12 3. Lithotripsy;

13 4. Computed tomography (CT) imaging;

14 5. Computed tomographic angiography (CTA);

15 6. Computed tomography guidance;

16 7. Magnetic resonance imaging (MRI);

17 8. Magnetic resonance angiogram (MRA);

18 9. Magnetic resonance spectroscopy;

19 10. Positron emission tomography (PET);

20 11. Dual energy X-ray absorptiometry (DXA);

21 12. Radiographic absorptiometry;

22 13. Cineradiography/videoradiography;

23 14. Xeroradiography;

1 15. Ultrasound subsequent to second (2<sup>nd</sup>) obstretic ultrasound;

2 16. Unlisted procedure;

3 17. Myocardial imaging;

4 18. Cardiac blood pool imaging;

5 19. Single Photon Emission Computed Tomography (SPECT);

6 20. Sensory nerve conduction test (SNCT);

7 21. Magnetic resonance cholangiopancreatography (MRCP);

8 22. Topographic brain mapping;

9 23. Magnetic source imaging;

10 24. Fluorine-eighteen (18) fluorodeoxyglucose (F-eighteen (18) FDG) imaging;

11 25. Electron beam computed tomography (also known as Ultrafast CT, Cine CT); and

12 26. Magnetic Resonance Technology (MRT)-General.

13 (b) An outpatient hospital service not identified in paragraph (a) of this subsection shall  
14 be:

15 1. Medically necessary; and

16 2. Effective August 1, 2006, clinically appropriate pursuant to the criteria established in  
17 907 KAR 3:130.

18 (2) The requirements established in subsection (1) of this section shall not apply to an  
19 emergency service.

20 (3) A following covered hospital outpatient services shall be furnished by or under the  
21 supervision of a duly licensed physician, or if applicable, a duly licensed dentist:

22 (a) A diagnostic service ordered by a physician;

23 (b) A therapeutic service ordered by a physician;

1 (c) An emergency room service provided in an emergency situation as determined by a  
2 physician; or

3 (d) A drug, biological, or injection administered in the outpatient hospital setting.

4 (4) A covered hospital outpatient service for maternity care may be provided by:

5 (a) An advanced registered nurse practitioner (ARNP) who has been designated by the  
6 Kentucky Board of Nursing as a nurse midwife; or

7 (b) A registered nurse who holds a valid and effective permit to practice nurse  
8 midwifery issued by the Cabinet for Health and Family Services.

9 Section 3. Hospital Outpatient Services not Covered by the Department. The following  
10 services shall not be considered a covered hospital outpatient service:

11 (1) An item or service that does not meet the requirements established in Section 2(1);

12 (2) A service for which:

13 (a) An individual has no obligation to pay; and

14 (b) No other person has a legal obligation to pay;

15 (3) A medical supply or appliance, unless it is incident to the performance of a  
16 procedure or service in the hospital outpatient department and included in the rate of  
17 payment established by the Medical Assistance Program for hospital outpatient services;

18 (4) A drug, biological, or injectable purchased by or dispensed to a patient; or

19 (5) A routine physical examination. [Hospital Outpatient Services Covered by the  
20 Medical Assistance Program. There are no limitations on the number of hospital  
21 outpatient visits or services available to program recipients.

22 ~~(1) Hospital outpatient services to be covered, as listed below, shall be prescribed by,~~  
23 ~~or in the case of emergency room services, determined to be medically necessary by a~~

1 ~~duly-licensed physician, or if applicable, a duly-licensed dentist, for the care and~~  
2 ~~treatment indicated in the management of illness, injury, impairment or maternity care, or~~  
3 ~~for the purpose of determining the existence of an illness or condition in a patient. The~~  
4 ~~services shall be furnished by or under the supervision of a duly-licensed physician, or if~~  
5 ~~applicable, a duly-licensed dentist.~~

6 ~~(a) Diagnostic services as ordered by a physician.~~

7 ~~(b) Therapeutic services as ordered by a physician.~~

8 ~~(c) Emergency room services in emergency situations as determined by a physician.~~

9 ~~(d) Effective with regard to services provided on or after July 1, 1990, drugs,~~  
10 ~~biologicals, or injections administered in the outpatient hospital setting.~~

11 ~~(2) Hospital outpatient services for maternity care may be provided by an advanced~~  
12 ~~registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of~~  
13 ~~Nursing as a nurse midwife or by a registered nurse who holds a valid and effective permit~~  
14 ~~to practice nurse midwifery issued by the Cabinet for Human Resources.~~

15 ~~Section 2. Hospital Outpatient Services not Covered by the Medical Assistance~~  
16 ~~Program.~~

17 ~~(1) Items and services which are not reasonable and necessary for or related to the~~  
18 ~~diagnosis or treatment of illness or injury, impairment or maternity care.~~

19 ~~(2) Services for which the individual has no obligation to pay and for which no other~~  
20 ~~person has a legal obligation to provide or to pay.~~

21 ~~(3) Medical supplies and appliances except those incident to the performance of~~  
22 ~~services in the hospital outpatient department and which are included in the rate of~~  
23 ~~payment established by the Kentucky Medical Assistance Program for hospital outpatient~~

1    ~~services.~~

2        ~~(4) Drugs, biologicals and injectables purchased by or dispensed to a patient.~~

3        ~~(5) Routine physical examinations.]~~

907 KAR 1:014E

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. Thomas Badgett, MD, PhD, Acting Commissioner  
Department for Medicaid Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Burnside, Undersecretary  
Administrative and Fiscal Affairs

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark D. Birdwhistell, Secretary  
Cabinet for Health and Family Services



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:014E  
Cabinet for Health and Family Services  
Department for Medicaid Services  
Agency Contact Person: Stuart Owen (502-564-6204)

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the coverage provisions for outpatient hospital services.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions for outpatient hospital services.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions for outpatient hospital services.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions for outpatient hospital services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This amendment establishes the use of criteria by the Department to determine the clinical appropriateness of delivered services as well as clarifies services requiring prior authorization.
  - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the viability of the Medicaid program and to ensure the appropriateness of care provided to Medicaid recipients.
  - (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the use of criteria by the department to determine the clinical appropriateness of delivered services.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by establishing the use of criteria by the department to determine the clinical appropriateness of delivered services.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all outpatient hospital service providers participating in the Kentucky Medicaid Program.

- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: For a given service to be covered by the department (and thus a provider reimbursed), the service must be clinically appropriate pursuant to 907 KAR 3:130.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The Department for Medicaid Services (DMS) is unable to determine a precise aggregate fiscal impact of the use of the criteria established in 907 KAR 3:130 to determine clinical appropriateness for multiple programs; however, anticipates a savings of at least \$2.5 million (\$1.7 million federal funds; \$0.8 million state funds) annually.
  - (b) On a continuing basis: The Department for Medicaid Services (DMS) is unable to determine a precise aggregate fiscal impact of the use of the criteria established in 907 KAR 3:130 to determine clinical appropriateness for multiple programs; however, anticipates a savings of at least \$2.5 million (\$1.7 million federal funds; \$0.8 million state funds) annually.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.